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S. Hadit Singh Obra Vs. S. Daljit Singh

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Court : Delhi

Decided On : Jul-26-1974

Reported in : AIR1975Delhi144; 11(1975)DLT289

Judge : V.S. Deshpande and; T.V.R. Tatachari, JJ.

Acts : Limitation Act, 1963 - Sections 12; Code of Civil Procedure (CPC), 1908 - Sections 96

Appeal No. : Execution First Appeal No. 8 of 1971

Appellant : S. Hadit Singh Obra

Respondent : S. Daljit Singh

Advocate for Pet/Ap. : C.L. Itorora and; Harish Chandra, Advs

Judgement :
ORDER

XXl rule 10, unlike Order Xli rule I, doesn't require that an execution application shall be accompanied by a copy of the decree to be execuired.

(7)Order Xxi rule 1 1 (1) expressly states that where a decree is for the payment of money the Court mav, on the oral application of the decree holder, order immediate execution thereof at the tima of the passing of the decree by the judgment debtor prior to the preparation of a warrant if ie is within the precincts of

the Court.

(16) The passing of a decree in the eye of law thereforee means the delivery of a judgment on which a decree has to be drawn up compulsorily by the Court. The delay on the part of the Court in drawing up of the decree will not mean that no decree is passed in favor of a successful party until it is actually drawn up and signed by the Court. there is a distinction thereforee, between the passing of a decree and the drawing up of a decree. I his is why the expanation to section 12 of the Limiration Act l963 says that in computing the time requisite for obtaining a copy of a decree any time taken by the Court prepare the decree before an application for a copy of it is made shall not be excluded. The time to file appeals thereforee runs from the delivery of the judgment or order onwards and not from the date on which the decree is drawn up I his is why the date of the decree must be the same as the date of the judgment even though the decree may have been actually drawn up long after the judgment was delivered. The failure of the Court to draw up a decree would not thereforee be construed (as was done by P. N Khanna J) to mean that the terms of the compromise did not relate to the suit and were not meant to be followed by a decree.

(17) When the appellant filed Execution Case No. 27 of 1970 and the respondent made the payment to the appellant in their execution, no objection was raised by the respondent on the ground that the compromise decree was not excutable As stated above, in the eye law, the compromise decree was passed even though it was not actually drawn up It was, thereforee, incumbent on the respondent to raise such an objection if he wanted to oppose the executability of the decree. As he did not raise the objection at that tims as he 'might and ought to have done, he is precluded by Explanationn No. 1V to section 11 Civil Procedure Code from raising such an objection subsequently by the rule of constructive rest judiciata. P.N. Khanna, J. has pointed out that no decision on merits was given as to the executability of the decree. But the learned Single Judge does not seem to have considered that objection as to the execusability was barred not by actual res-judicata but by constructive resjudicata. We find thereforee, that so far as the payment of money to the appellant by the respondent under the terms of the compromise was concerned, the corn promise decree was executable and also

that the objection to its executability not having been raised in Execution No 27 of 1970, the respondent was barred by constructive rest judicata from raising it at any subsequent time.

(18) As the legal position stated above is clear on principles, we have not thought it necessary to refer to the decisions cited by the lerned counsel of the parties in proof of points which are self-evident. For the above reasons, thereforee, we allow both the appeals, set aside the orders appealed against and direct as follows :

(1)All the terms of the compromise of December 5, 1968 relate to the suit and shall thereforee form part of the decree which shall be drawn up according to the terms of the compromise as ordered to be recorded by Jagjit Singh J.

(2)The terms of the compromise relating to the payment of money by the respondent to the appellant are held to be an executable part of the compromise decree. The Executing Court is left free to decide as to the executability about the other parts of the compromiss decree.

(3)The respondent shall pay to the appellant the costs of both the appeals.

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